

## REMARKS

The above amendments and these remarks are responsive to the final Office action dated August 24, 2007, and support the accompanying Request for Continued Examination as a submission under 37 C.F.R. § 1.114(c). Claims 1–28, 31–35, 50, and 51 are pending in the application, with claim 3 being withdrawn from consideration. In the Office action, the Examiner allowed claims 28 and 31–35, and rejected each of the pending claims as follows:

- Claims 1, 2, 4–16, 50, and 51 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite;
- Claims 17, 18, and 20–27 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,440,135 to Orbay et al. (“Orbay”); and
- Claim 19 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Orbay in view of U.S. Patent No. 6,383,186 to Michelson (“Michelson”).

Applicant traverses the rejections, contending that all of the pending claims are definite and patentable over the cited references. Nevertheless, to expedite the issuance of a patent, and to more particularly point out and distinctly claim aspects of the invention that applicant wants to patent now, applicant has amended claims 1, 11, 17, and 27. However, applicant reserves the right to pursue any of the amended claims, in original or amended form, at a later time. Applicant also has presented arguments showing that all of the pending claims are definite and are patentable over the cited references. Accordingly, in view of the amendments above and the remarks below, applicant respectfully requests reconsideration of the application and prompt issuance of a Notice of Allowance covering all of the pending claims.

*I.*      **Request for Continued Examination**

Applicant is submitting herewith a Request for Continued Examination (RCE) under 37 C.F.R. § 1.114. This Request complies with the requirements of 37 C.F.R. § 1.114 as follows:

- (i)      Prosecution in the application is closed, since the latest Office action was a final Office action under 37 C.F.R. § 1.113.
- (ii)     The Request is accompanied by a submission as set forth at 37 C.F.R. § 1.114(c), specifically, the amendments and remarks set forth herein.
- (iii)    The Request is accompanied by the fee set forth at 37 C.F.R. § 1.17(e).

Accordingly, applicant respectfully requests grant of this Request for Continued Examination.

*II.*      **Claim Rejections – 35 U.S.C. § 112, Second Paragraph**

The Examiner rejected claims 1, 2, 4–16, 50, and 51 under 35 U.S.C. § 112, second paragraph, for allegedly being indefinite. In particular, the Examiner stated that the phrase “permitted range of generally in-plane motion” is unclear. In response, applicant has amended claims 1 and 11 to remove the term “in-plane” from each claim and to recite “permitted range of motion for the bone plate generally parallel to a plane defined by the bone plate” (claim 1) and to recite “movement of the bone plate generally parallel to a plane defined by the bone plate” (claim 11). Applicant believes these amendments to claims 1 and 11 fully address all the rejections under Section 112, second paragraph, including the rejections of claims 2, 4–10, 50, and 51, which were rejected only for depending from claim 1, and the rejections of claims 12–16, which were rejected only for depending from claim 11. Applicant thus respectfully requests

withdrawal of all rejections under Section 112, second paragraph. Furthermore, claims 1, 2, 4–16, 50, and 51 should be allowed because they were not rejected over prior art in the Office action.

### **III. Claim Rejections – 35 U.S.C. §§ 102 and 103**

The Examiner rejected each of claims 17–27 as being anticipated or obvious. Claims 17, 18, and 20–27 were rejected under 35 U.S.C. § 102(b) as being anticipated by Orbay, and claim 19 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Orbay in view of Michelson. Applicant traverses the rejections, contending that the cited references, taken alone or in combination, do not disclose, teach, or suggest every element of any of the rejected claims. Nevertheless, for the reasons set forth above, applicant has amended independent claim 17. Claim 17 and claims 18–27 depending therefrom are patentable for at least the reasons set forth below.

Independent claim 17, as amended, reads as follows:

17. (Currently Amended) A method of bone fixation, comprising:  
selecting a bone plate defining an opening and a transverse [[guide]] slot;

connecting the bone plate to a bone by placing respective first and second fasteners through the opening and the transverse [[guide]] slot and into the bone so that the bone plate has an angular disposition relative to the bone;

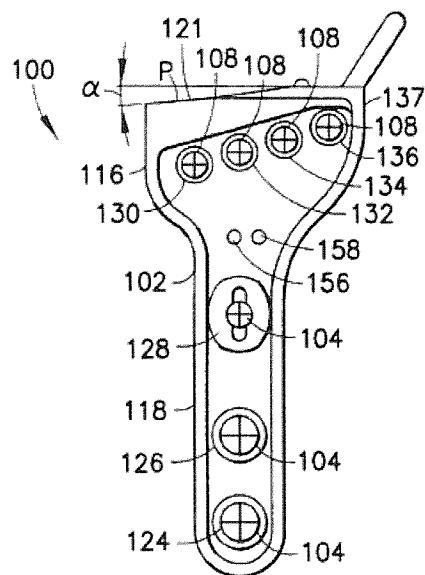
adjusting the angular disposition by moving the bone plate along a path permitted by relative travel of the second fastener along the transverse [[guide]] slot while the first and second fasteners are fixed relative to each other; and

restricting additional movement of the bone plate relative to the bone to fix the angular disposition.

Claim 17 was rejected in the Office action as being anticipated by Orbay. However, Orbay does not disclose, teach, or suggest every element of amended claim 17. For

example, Orbay does not disclose, teach, or suggest “selecting a bone plate defining an opening and a transverse slot” or adjusting “by relative travel of the second fastener along the transverse slot.”

Orbay relates to a volar fixation system with stabilization pegs. An example of the system, volar fixation system 100, is presented below in Figure 2, which is reproduced here to facilitate review.



**FIG.2**

System 100 includes a bone plate 102 for placement against the volar side of the radius bone. Bone plate 102 includes a head portion 116 extending from a body portion 118. Each of the head and body portions defines a series of circular openings for receiving pegs or screws that couple the bone plate to the radius bone. In particular, head portion 116 defines peg holes 130-136 for receiving pegs 108, and body portion 118 defines countersunk screw holes 124 and 126 for receiving bone screws 104.

The bone plate has only one elongate opening or slot, namely, countersunk screw hole 128. Screw hole 128 extends longitudinally in bone plate 102 and thus is not a transverse slot. Accordingly, Orbay does not disclose, teach, or suggest selecting a bone plate defining a transverse slot or, because it does not have a transverse slot, adjusting the angular disposition of a bone plate by relative travel of a second fastener along a transverse slot, as recited by amended claim 17. More generally, Orbay does not disclose, teach, or suggest any type of adjustment of the angular disposition of a bone plate after placement of first and second fasteners, and particularly not adjustment of a bone plate's angular disposition by relative travel of a fastener along a slot of any type. Michelson does not correct any of these defects in Orbay.

In summary, independent claim 17 is patentable over Orbay alone, or in combination with Michelson, and should be allowed. In addition, claims 18–27, which depend from claim 17, also should be allowed for at least the same reasons as claim 17.

#### ***IV. Conclusion***

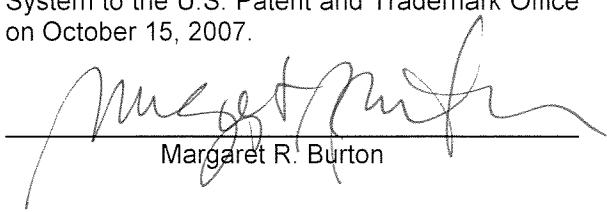
Applicant believes that the present communication fully addresses all issues raised by the Examiner in the Office action and that all of the pending claims are in condition for allowance. Accordingly, applicant respectfully requests that the Examiner issue a Notice of Allowance covering all of the pending claims. If the Examiner has any

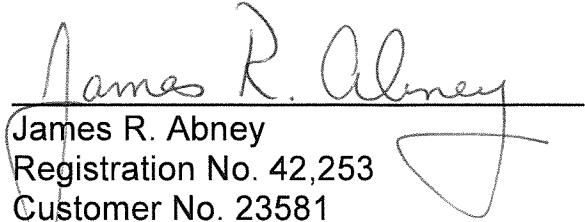
questions, or if a telephone interview would in any way advance prosecution of the application, please contact the undersigned attorney of record, or his associate, Stan Hollenberg (Reg. No. 47,658), both at (503) 224-6655.

Respectfully submitted,

KOLISCH HARTWELL, P.C.

**CERTIFICATE OF ELECTRONIC FILING**  
I hereby certify that this correspondence is being submitted via the EFS-Web Electronic Filing System to the U.S. Patent and Trademark Office on October 15, 2007.

  
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